

**THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

Farideh Richardson )  
for daughter LaDan Richardson, )  
Plaintiff, )  
vs. ) No. 05-0361-CV-W-FJG  
Jo Anne B. Barnhart, )  
Commissioner of Social Security, )  
Defendant. )

**ORDER**

This is a proceeding under Title II of the Social Security Act, 42 U.S.C. §§ 401 et seq., in which plaintiff requested review of the Commissioner's decision denying her application for disability benefits. Plaintiff's claims were denied initially. On August 23, 2004, an administrative law judge (ALJ) rendered a decision in which she found that Plaintiff was not under a "disability," as defined in the Act. On March 31, 2005, the Appeals Council of the Social Security Administration denied plaintiff's request for review. Thus, the ALJ's decision stands as the final decision of the Commissioner. Plaintiff's appeal is now before this Court. The facts and arguments are presented in the record and will not be repeated here.

Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), provides for judicial review of a "final decision" of the Commissioner of the Social Security Administration under Title II. Judicial review of the Commissioner's final decision under 42 U.S.C. § 405(g) is limited to whether there exists substantial evidence in the record as a whole to support the decision of the Commissioner. Siemers v. Shalala, 47 F.3d 299, 301 (8<sup>th</sup> Cir. 1995). This determination requires review of the entire record, including both evidence in support of, and in opposition to, the Commissioner's decision. Fountain v. Railroad Retirement Bd., 88 F.3d 528, 530 (8<sup>th</sup> Cir. 1996). The Court's role, however, is not to re-weigh the evidence or try the issues de novo. Craig v. Chater, 943 F. Supp. 1184, 1188 (W.D. Mo. 1996) (citing McClees v. Shalala, 2 F.3d 301, 302 (8<sup>th</sup> Cir. 1994)). When supported by substantial evidence, the Commissioner's findings are conclusive and must be affirmed. Richardson

v. Perales, 402 U.S. 389, 401 (1971).

Substantial evidence is more than a mere scintilla but less than preponderance. It means such evidence that a reasonable mind would accept as adequate to support a conclusion. Johnson v. Chater, 108 F.3d 178, 179 (8<sup>th</sup> Cir. 1997), citations omitted. The substantial evidence standard, however, presupposes a zone of choice within which the decision makers can go either way, without interference by the courts. Clarke v. Bowen, 843 F.2d 271, 272-73 (8<sup>th</sup> Cir. 1988). “[A]n administration decision is not subject to reversal merely because substantial evidence would have supported an opposite decision.” Id. Hence, “if it is possible to draw two inconsistent positions from the evidence and one of those positions represents the agency’s finding, we must affirm the decision.” Roe v. Chater, 92 F.3d 672, 672 (8<sup>th</sup> Cir. 1996) (quoting Robinson v. Sullivan, 956 F.2d 836, 838 (8<sup>th</sup> Cir. 1992)).

Having reviewed the record in this case, the Court finds that the record as a whole reflects substantial evidence to support the ALJ’s decision. Accordingly, it is

**ORDERED** that plaintiff’s appeal of the ALJ’s decision is denied.

**/S/ FERNANDO J. GAITAN, JR.**

Fernando J. Gaitan, Jr.  
United States District Judge

Dated: January 17, 2006  
Kansas City, Missouri